

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/677,672	AUDONNET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dave T. Nguyen	1632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/12/2004 & 6/1/05.
2. ☒ The allowed claim(s) is/are 1,5,6,10,13 and 19.
3. ☒ The drawings filed on 02 October 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

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The Declaration signed by Dr Audonnet was submitted on November 12, 2004 <sup>and</sup> was entered. However, the examiner acknowledges that the office inadvertently did not have the Declaration entered as an amendment after final. As such, the examiner was not aware of the entry of the Declaration until applicant called and left messages on May 31, 2005, June 1, 2005 and June 2, 2005. From June 1, 2005 until June 3, 2005, both the examiner and the examiner's supervisor, Ram Shukla, attempted to resolve applicant's request to have the application examined immediately. Specifically, on June 3, 2005, the examiner placed a phone call to applicants and advised to applicants that perhaps should the Declaration itself removes all outstanding rejections, applicant could file a petition to have the RCE fee reimbursed. On June 4, 2005, both the examiner and supervisor agreed that the Declaration indeed removes all outstanding rejections because of the unexpected result as elaborated previously in the advisory action. Thus, and as the result of the RCE being filed on June 1, this as-filed application is now being examined and reviewed by the examiner.

In addition, during the process of reviewing the currently pending claims as set forth in the claim amendment dated November 12, 2004, it appears that claim 13 was amended so as to be dependent from claim 10 rather than canceled claim 6. More specifically, the amended claim 13 was inadvertently amended as "The vaccine of claim 10", even though claim 10 is a method claim.

#### **Examiner's Amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

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by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

An authorization for this examiner's amendment was given in a personal interview with Attorney Angela M. Collison on June 6, 2005. During the interview, the examiner and applicant agreed that claim 13 should be amended to recite – The method of claim 10 --. As such, the examiner's amendment is set forth below:

13. (Currently Amended) The ~~vaccine~~ method of claim 10, wherein the ~~adjuvant compound~~ added Carbopol has a concentration of 0.06 to 1% w/v.

Given the reasons as set forth in the immediately preceding paragraphs, claims 1, 5, 6, 10, 13, and 19 are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **571-272-0731**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Ram Shukla*, may be reached at **571-272-0735**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Central Fax number, which is **571-273-8300**.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system

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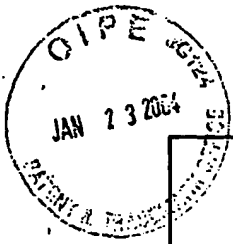
provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

**For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.**

Dave Nguyen  
Primary Examiner  
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A handwritten signature in black ink, appearing to read 'Dave', with a stylized flourish extending to the right.

**DAVE TRONG NGUYEN  
PRIMARY EXAMINER**



Exhibits only  
Do not enter as official Drawings  
616/05  
DTN

## Viremia following vaccination with EHV-1

